

brought before it on their merits, or remand the matter to the Service with appropriate instructions.

(b) *After denial of an application.* After an application for naturalization is denied following a hearing before a Service officer pursuant to section 336(a) of the Act, the applicant may seek judicial review of the decision pursuant to section 310 of the Act.

PART 312—EDUCATIONAL REQUIREMENTS FOR NATURALIZATION

Sec.

312.1 Literacy requirements.

312.2 Knowledge of history and government of the United States.

312.3 Standardized citizenship testing.

312.4 Selection of interpreter.

312.5 Failure to meet educational and literacy requirements.

AUTHORITY: 8 U.S.C. 1103, 1423, 1443, 1447, 1448.

SOURCE: 56 FR 50481, Oct. 7, 1991, unless otherwise noted.

§312.1 Literacy requirements.

(a) *General.* Except as otherwise provided in paragraph (b) of this section, no person shall be naturalized as a citizen of the United States upon his or her own application unless that person can demonstrate an understanding of the English language, including an ability to read, write, and speak words in ordinary usage in the English language.

(b) *Exceptions.* The following persons need not demonstrate an ability to read, write and speak words in ordinary usage in the English language:

(1) A person who, on the date of filing of his or her application for naturalization, is over 50 years of age and has been living in the United States for periods totalling at least 20 years subsequent to a lawful admission for permanent residence;

(2) A person who, on the date of filing his or her application for naturalization, is over 55 years of age and has been living in the United States for periods totalling at least 15 years subsequent to a lawful admission for permanent residence; or

(3) The requirements of paragraph(a) of this section shall not apply to any

person who is unable, because of a medically determinable physical or mental impairment or combination of impairments which has lasted or is expected to last at least 12 months, to demonstrate an understanding of the English language as noted in paragraph (a) of this section. The loss of any cognitive abilities based on the direct effects of the illegal use of drugs will not be considered in determining whether a person is unable to demonstrate an understanding of the English language. For purposes of this paragraph, the term *medically determinable* means an impairment that results from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical or laboratory diagnostic techniques to have resulted in functioning so impaired as to render an individual unable to demonstrate an understanding of the English language as required by this section, or that renders the individual unable to fulfill the requirements for English proficiency, even with reasonable modifications to the methods of determining English proficiency, as outlined in paragraph(c) of this section.

(c) *Literacy examination*—(1) *Verbal skills.* The ability of an applicant to speak English shall be determined by a designated examiner from the applicant's answers to questions normally asked in the course of the examination.

(2) *Reading and writing skills.* Except as noted in §312.3, an applicant's ability to read and write English shall be tested using excerpts from one or more parts of the Service authorized Federal Textbooks on Citizenship written at the elementary literacy level, Service publications M-289 and M-291. These textbooks may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, and are available at certain public educational institutions. An applicant's writing sample shall be retained in the applicant's Service file.

[56 FR 50481, Oct. 7, 1991, as amended at 62 FR 12923, Mar. 19, 1997; 62 FR 15751, Apr. 2, 1997; 64 FR 7993, Feb. 18, 1999]

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§ 312.2 Knowledge of history and government of the United States.

(a) *General.* No person shall be naturalized as a citizen of the United States upon his or her own application unless that person can demonstrate a knowledge and understanding of the fundamentals of the history, and of the principles and form of government, of the United States. A person who is exempt from the literacy requirement under § 312.1(b) (1) and (2) must still satisfy this requirement.

(b) *Exceptions.* (1) The requirements of paragraph(a) of this section shall not apply to any person who is unable to demonstrate a knowledge and understanding of the fundamentals of the history, and of the principles and form of government of the United States because of a medically determinable physical or mental impairment, that already has or is expected to last at least 12 months. The loss of any cognitive skills based on the direct effects of the illegal use of drugs will not be considered in determining whether an individual may be exempted. For the purposes of this paragraph the term *medically determinable* means an impairment that results from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical or laboratory diagnosis techniques to have resulted in functioning so impaired as to render an individual to be unable to demonstrate the knowledge required by this section or that renders the individuals unable to participate in the testing procedures for naturalization, even with reasonable modifications.

(2) *Medical certification.* All persons applying for naturalization and seeking an exception from the requirements of § 312.1(a) and paragraph(a) of this section based on the disability exceptions must submit Form N-648, Medical Certification for Disability Exceptions, to be completed by a medical or osteopathic doctor licensed to practice medicine in the United States or a clinical psychologist licensed to practice psychology in the United States (including the United States territories of Guam, Puerto Rico, and the Virgin Islands). Form N-648 must be submitted as an attachment to the applicant's Form N-400, Application for Naturalization.

These medical professionals shall be experienced in diagnosing those with physical or mental medically determinable impairments and shall be able to attest to the origin, nature, and extent of the medical condition as it relates to the disability exceptions noted under § 312.1(b)(3) and paragraph(b)(1) of this section. In addition, the medical professionals making the disability determination must sign a statement on the Form N-648 that they have answered all the questions in a complete and truthful manner, that they (and the applicant) agree to the release of all medical records relating to the applicant that may be requested by the Service and that they attest that any knowingly false or misleading statements may subject the medical professional to the penalties for perjury pursuant to title 18, United States Code, Section 1546 and to civil penalties under section 274C of the Act. The Service also reserves the right to refer the applicant to another authorized medical source for a supplemental disability determination. This option shall be invoked when the Service has credible doubts about the veracity of a medical certification that has been presented by the applicant. An affidavit or attestation by the applicant, his or her relatives, or guardian on his or her medical condition is not a sufficient medical attestation for purposes of satisfying this requirement.

(c) *History and government examination*—(1) *Procedure.* The examination of an applicant's knowledge of the history and form of government of the United States shall be given orally by a designated examiner in the English language unless:

(i) The applicant is exempt from the English literacy requirement under § 312.1(b), in which case the examination may be conducted in the applicant's native language with the assistance of an interpreter selected in accordance with § 312.4 of this part, but only if the applicant's command of spoken English is insufficient to conduct a valid examination in English;

(ii) The applicant is required to satisfy and has satisfied the English literacy requirement under § 312.1(a), but the officer conducting the examination

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determines that an inaccurate or incomplete record of the examination would result if the examination on technical or complex issues were conducted in English. In such a case the examination may be conducted in the applicant's native language, with the assistance of an interpreter selected in accordance with § 312.4;

(iii) The applicant has met the requirements of § 312.3.

(2) *Scope and substance.* The scope of the examination shall be limited to subject matters covered in the Service authorized Federal Textbooks on Citizenship except for the identity of current officeholders. In choosing the subject matters, in phrasing questions and in evaluating responses, due consideration shall be given to the applicant's education, background, age, length of residence in the United States, opportunities available and efforts made to acquire the requisite knowledge, and any other elements or factors relevant to an appraisal of the adequacy of the applicant's knowledge and understanding.

(Approved by the Office of Management and Budget under control number 1115-0208)

[56 FR 50481, Oct. 7, 1991, as amended at 58 FR 49912, Sept. 24, 1993; 62 FR 12923, Mar. 19, 1997; 62 FR 15751, Apr. 2, 1997; 64 FR 7993, Feb. 18, 1999]

§ 312.3 Standardized citizenship testing.

(a)(1) An applicant for naturalization may satisfy the reading and writing requirements of § 312.1 and the knowledge requirements of § 312.2 by passing, within one (1) year preceding the date on which he or she files an application for naturalization, or at any time subsequent to filing an application but prior to a final determination on the application, a standardized citizenship test given by an entity authorized by the Service to conduct such a test.

(2) The applicant must still demonstrate his or her ability to speak and understand English in accordance with § 312.1(c)(1). An applicant who passes a standardized citizenship test may submit evidence of passage of the test either with the submission of the application, at the examination on the application, or at the time of the second examination provided in § 312.5(a). Any

evidence of passage submitted by the applicant shall be subject to independent verification by the Service with the test provider.

(3) An applicant who passes a standardized citizenship test as provided in paragraph (a)(1) of this section for naturalization shall not be reexamined at the Service naturalization interview on his or her ability to read and write English or on his or her knowledge of the history and form of government of the United States, unless the examining officer has reasonable cause to believe, subsequent to verification of the applicant's test results with the authorized testing entity, that the applicant's test results were obtained English may not be the sole reason for finding that the test results were obtained through fraud or misrepresentation. The Applicant's inability to speak English may not be the sole reason for finding that the test results were obtained through fraud or misrepresentation. A written record of the officer's determination shall be made in the record of the application including the response from the testing entity concerning the applicant's test.

(4) An applicant who has failed a standardized citizenship test will not be prejudiced by that failure during an examination conducted by the Service under §§ 312.1 and 312.2, and may continue to pursue the application with the Service as if the applicant had never taken the standardized test.

(b) An applicant who has obtained lawful permanent resident alien status pursuant to section 245A of the Act, and who, at that time demonstrated English language proficiency in reading and writing, and knowledge of the government and history of the United States through either an examination administered by the Service or a standardized section 312 test authorized by the Service for use with Legalization applicants as provided in section 245A(b)(1)(D)(iii) of the Act, will not be reexamined on those skills at the time of the naturalization interview. However, such applicant must still establish eligibility for naturalization through testimony in the English language.

[56 FR 50481, Oct. 7, 1991, as amended at 58 FR 49912, Sept. 24, 1993; 60 FR 6651, Feb. 3, 1995]

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§ 312.4 Selection of interpreter.

An interpreter to be used under § 312.2 may be selected either by the applicant or by the Service. However, the Service reserves the right to disqualify an interpreter provided by the applicant in order to ensure the integrity of the examination. Where the Service disqualifies an interpreter, the Service must provide another interpreter for the applicant in a timely manner. If rescheduling of the interview is required, then a new date shall be set as soon as practicable so as not to delay unduly the adjudication of the application. The officer who disqualifies an interpreter shall make a written record of the reason(s) for disqualification as part of the record of the application.

[60 FR 6651, Feb. 3, 1995]

§ 312.5 Failure to meet educational and literacy requirements.

(a) An applicant for naturalization who fails the English literacy or history and government test at the first examination will be afforded a second opportunity to pass the test(s) within 90 days after the first examination during the pendency of the application.

(b) If an applicant who receives notice of the second scheduled examination date fails to appear without good cause for that second examination without prior notification to the Service, the applicant will be deemed to have failed this second examination. Before an applicant may request a postponement of the second examination to a date that is more than 90 days after the initial examination, the applicant must agree in writing to waive the requirement under section 336 of the Act that the Service must render a determination on the application within 120 days from the initial interview, and instead to permit the Service to render a decision within 120 days from the second interview.

[56 FR 50481, Oct. 7, 1991, as amended at 58 FR 49912, Sept. 24, 1993]

PART 313—MEMBERSHIP IN THE COMMUNIST PARTY OR ANY OTHER TOTALITARIAN ORGANIZATIONS

Sec.

313.1 Definitions.

313.2 Prohibitions.

313.3 Statutory exemptions.

313.4 Procedure.

AUTHORITY: 8 U.S.C. 1103, 1424, 1443.

SOURCE: 56 FR 50482, Oct. 7, 1991, unless otherwise noted.

§ 313.1 Definitions.

For purposes of this part:

Advocate includes, but is not limited to, advising, recommending, furthering by overt act, or admitting a belief in a doctrine, and may include the giving, lending, or promising of support or of money or any thing of value to be used for advocating such doctrine.

Advocating Communism means advocating the establishment of a totalitarian communist dictatorship, including the economic, international, and governmental doctrines of world communism, in all countries of the world through the medium of an internationally coordinated communist revolutionary movement.

Affiliation with an organization includes, but is not limited to, the giving, lending, or promising of support or of money or any thing of value, to that organization to be used for any purpose.

Circulate includes circulating, distributing, or displaying a work.

Communist Party includes:

(1) The Communist Party of the United States;

(2) The Communist Political Association;

(3) The Communist Party of any state of the United States, of any foreign state, or of any political or geographical subdivision of any foreign state;

(4) Any section, subsidiary, branch, affiliate, or subdivision of any such association or party;

(5) The direct predecessors or successors of any such association or party, regardless of what name such group or organization may have used, may now bear, or may hereafter adopt; and